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EX PARTE OR LATE ~~EX PARTE~~
Alexa Verveer
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ORIGINAL

November 26, 2003

RECEIVED

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Ex Parte Presentation in CS Docket No. 98-120

Dear Ms. Dortch:

On November 26, 2003, Discovery Communications, Inc. delivered the attached written ex parte letter from Discovery President and Chief Operating Officer Judith A. McHale to Chairman Powell, Commissioner Abernathy and Commissioner Adelstein, with a carbon copy to his/her respective advisor.

In accordance with the Commission's Rules, two copies of the letter are attached and are being filed with your office.

Sincerely,

Attachments

No. of Copies rec'd 0+1
List ABCDE



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EX PARTE OR LATE FILED

Judith A. McHale
President & Chief Operating Officer

November 26, 2003

Ex Parte

Chairman Michael K. Powell
Commissioner Kathleen Q. Abernathy
Commissioner Jonathan S. Adelstein
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Ex Parte Communication in CS Docket No. 98-120

Dear Chairman Powell, Commissioner Abernathy and Commissioner Adelstein:

Thank you again for meeting with me last week. I appreciated the opportunity to articulate the concerns of Discovery Communications, Inc. regarding multicast must carry and to discuss the deeply disruptive effects a multicast must carry mandate would have on Discovery's ability to continue to build a business that provides high quality programming to consumers.

NBC's announcement late last week that it is preparing to launch up to five new digital cable channels compels me to write in follow up to our meeting. According to reports, David Zaslav, president of NBC Cable, confirmed that NBC is contemplating a number of such networks, but said those plans hinge on the FCC's mandating multicast must carry.¹

I find NBC's announcement dispiriting, and yet utterly predictable. It illustrates the now actual rather than theoretical implications of multicast must carry. While NBC may well be the first broadcast network publicly to announce its preparations, I have no doubt the other broadcast networks have similar efforts in the works.

As we discussed in our meeting, in 1997 when the U.S. Supreme Court handed down the Turner II decision, 64 percent of the cable industry was vertically integrated and broadcast television networks were not aligned with content producers. Today, the landscape could not be more different. While cable vertical integration has decreased to 20 percent, after GE's acquisition of Vivendi is completed, the four major broadcast networks will all be aligned with content producers, and will control the preponderance of cable programming value.

¹ Li, Kenneth. "Peacock considering five new digital cable channels." USAToday.com. 22 Nov. 2003. <<http://usatoday.com>>.

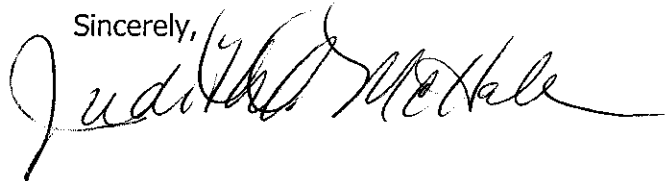
Chairman Michael K. Powell
Commissioner Kathleen Q. Abernathy
Commissioner Jonathan S. Adelstein
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This shift in the landscape, coupled with the retransmission consent rules, already gives broadcasters enormous leverage when it comes to getting carriage of and exorbitant payment for their affiliated cable networks. If the FCC mandates multicast must carry, it will compound that leverage dramatically. Consumer preferences will be cast aside as quality independent programming is replaced with broadcast offerings forced on the public by government mandate. How can that possibly be in the best interest of the American consumer?

When we met, each of you said it was important that broadcasters, if granted multicast must carry, provide more local programming. You may recall my skepticism that the broadcasters voluntarily would provide any more than a de minimis amount of local programming. This recent press report confirms that my skepticism was not unfounded. Among the new digital cable channels that NBC is contemplating are a crime channel and a movie channel. Neither, needless to say, advances the goal of localism.

Again, I appreciate the opportunity to discuss Discovery's concerns with you and urge you to affirm the FCC's 2001 initial must carry decisions.

Sincerely,

A handwritten signature in black ink, appearing to read "Judith A. McHale". The signature is fluid and cursive, with a large initial "J" and a long, sweeping underline.

cc: Jonathan Cody
Stacy Robinson Fuller
Johanna Mikes Shelton